IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 504 of 2006

Mustqueem
S/o Jahid
R/o Village- Kamalpur
P.S. Fatehpur
District Saharanpur (U.P.) ……...Applicant

Versus

1. State of Uttaranchal
2. Ist F.T.C. /Addl. Session Judge
   Roorkee, District Haridwar
3. Islam @ Bhura S/o Karimuddin
   R/o Village Chappur
   P.S. Bhagwanpur
   District Hardwar …… Respondents.

Shri Rajendra Singh, learned counsel for the applicant.
Learned A.G.A. for respondent No. 1 and 2.

Hon'ble Prafulla C. Pant, J

Heard Shri Rajendra Singh, learned counsel for the applicant and learned A.G.A.

2. By means of this petition, moved under Section 482 of Code of Criminal Procedure, 1973 (for brevity herein after referred as Cr.P.C.), the petitioner has challenged the order dated 05.05.2006, passed in Sessions Trial No. 325 of 2004 State Vs. Mustqueem by learned Additional Sessions Judge/ F.T.C., Roorkee District Haridwar. By said order, the trial court has directed that the Station House Officer of Police Station- Bhagwanpur, should take steps for brain mapping and finger print of accused Mustqueem (petitioner) from Forensic Laboratory, Banglore. The said order appears to have been passed in Sessions Trial after the

witnesses of the prosecution turned hostile. From the perusal of the impugned order, it further reveals that no application was moved by the prosecution, making request for brain mapping of the accused. Had it been a stage of investigation, the Investigating Officer could have sought such direction from the court in order to collect the evidence. But at the fag end of trial, learned Additional Sessions Judge, has passed the impugned order without referring any provision of law under which such direction can be issued at the end of the trial. Learned counsel for the State also failed to point out any provision of law, which empowers the trial court to pass such order.

3. Learned counsel for the petitioner, challenged the impugned order, also on the ground that it is hit by Clause (3) of Article 20 of the Constitution of India, which provides that “no person accused of any offence shall be compelled to be a witness against himself’.

4. After hearing the parties and going through the impugned order, this Court is of the view that as there is no express provision, empowering the trial court to pass an order to order brain mapping of an accused, against whom all the prosecution witness of fact, have turned hostile, the impugned order cannot be sustained in law. Accordingly, the impugned order dated 05.05.2006, passed by learned Additional Sessions Judge, Roorkee in Sessions Trial No. 325 of 2004 is set aside. However, the trial

court may proceed further with the trial of the case. The petition under Section 482 Cr.P.C., stands disposed of. (All pending applications in this case, also stand disposed of).

(Prafulla C. Pant, J.)

Dt. 21.09.2006
S